



DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Revision of Agency Information Collection Activity Under OMB Review: Sensitive Security Information Threat Assessment Application

AGENCY: Transportation Security Administration, DHS.

ACTION: 30-day Notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652-0042, abstracted below to OMB for review and approval of a revision of the currently approved collection under the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The collection involves TSA determining whether individuals seeking access to sensitive security information (SSI) may be granted access to the SSI.

DATES: Send your comments by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, OMB. Comments should be identified by Docket ID: TSA-2013-0001 and sent to the Federal eRulemaking Portal, <https://www.regulations.gov>. Please follow the portal instructions for submitting comments. This process is conducted in accordance with 5 CFR 1320.1.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh, TSA PRA Officer, Information Technology (IT), TSA-11, Transportation Security Administration,

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SUPPLEMENTARY INFORMATION: TSA published a *Federal Register* notice, with a 60-day comment period soliciting comments, of the following collection of information on May 5, 2020, 85 FR 26709.

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at <http://www.reginfo.gov> upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to--

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: Sensitive Security Information Threat Assessment Application

Type of Request: Revision of a currently approved collection.

OMB Control Number: 1652-0042

Forms(s): TSA 2211

Affected Public: Individuals seeking access to SSI Information.

Abstract: TSA is required to prohibit the disclosure of information that would be detrimental to transportation safety or security. *See* 49 U.S.C. sections 114(r) and 44912(d). *See also* TSA's regulations stipulating requirements for the protection of security sensitive information at 49 CFR part 1520. The regulations restrict access to SSI to "covered individuals" with a "need to know".

Pursuant to the requirements in Section 525(d) of the DHS Appropriations Act, 2007, Pub. L. 109-295, 120 Stat 1355, 1382, Oct. 4, 2006, as reenacted¹, TSA established a process allowing access to SSI in a civil proceeding in federal district court for party or party's counsel that demonstrates a substantial need for relevant SSI in preparation of the party's case.² In such cases, TSA may grant court reporters and experts access to the SSI under similar terms and conditions.

Under 49 CFR 1520.11 and 1520.15, TSA has also extended the use for security background checks to include other individuals, including a prospective bidder who is seeking to submit a proposal in response to a request for proposal issued by TSA; an individual involved in the performance of contractual agreements (*e.g.*, bailments) or other transaction agreements, or an individual receiving access to SSI as a conditional disclosure under 49 CFR 1520.15(e).

¹ Consolidated and Further Continuing Appropriations Act, 2013, Pub. L. 113-6, Div. D., Title V., sec. 510 (March 26, 2013).

² That in civil proceedings in the United States District Courts, where a party seeking access to SSI demonstrates that the party has substantial need of relevant SSI in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the information by other means, the party or party's counsel shall be designated as a covered person under 49 CFR part 1520.7 in order to have access to the SSI at issue in the case, provided that the overseeing judge enters an order that protects the SSI from unauthorized or unnecessary disclosure and specifies the terms and conditions of access, unless upon completion of a criminal history check and terrorist assessment like that done for aviation workers on the persons seeking access to SSI, or based on the sensitivity of the information, the Transportation Security Administration or DHS demonstrates that such access to the information for the proceeding presents a risk of harm to the nation: Provided, That notwithstanding any other provision of law, an order granting access to SSI under this section shall be immediately appealable to the United States Courts of Appeals, which shall have plenary review over both the evidentiary finding and the sufficiency of the order specifying the terms and conditions of access to the SSI in question: Provided further, That notwithstanding any other provision of law, the Secretary may assess a civil penalty of up to \$50,000 for each violation of 49 CFR part 1520 by persons provided access to SSI under this provision.

Under 49 CFR 1520.11(c), TSA may make an individual's access to SSI contingent upon satisfactory completion of a security threat assessment (STA), including evaluation of a criminal history records check (CHRC); and/or a name-based check against federal law enforcement, terrorism, and immigration databases; and/or other procedures and requirements for safeguarding SSI that are satisfactory to TSA. *See also* 49 U.S.C. section 114(f)(4). To conduct this security background check, TSA collects identifying information, an explanation supporting the individuals' need for the information, and other information related to safeguarding SSI to conduct the STAs. For individuals who have received a comparable STA from TSA (such as being a member of the TSA PreCheck® Application Program), TSA may also use the known traveler number issued by TSA to inform an individual's eligibility to access SSI, or otherwise honor the comparable STA. TSA uses the results of the STA to make a final determination on whether the individual may be granted access to SSI. TSA also uses the information as part of its determination as to whether provision of access to specific SSI would present a risk of harm to the nation.

To address program needs, TSA is revising the information collection. In particular, TSA is revising TSA Form 2211. The form entitled *SSI Access Threat Assessment Questionnaire* will now become two forms: TSA Form 2817A for court proceedings and TSA Form 2817B for standard use. The data points now consist of identifying information, including, but not limited to, full name (including any aliases), date of birth, place of birth, gender, Social Security Number (optional), employer name (optional); country of citizenship, Known Traveler Number, level of clearance and date granted and information regarding the need for the information (litigant, bidder, *etc.*).

In addition to the information required for conducting background checks, TSA requires contract bidders to provide a certification from each company/entity that its employees/personnel who are provided access to SSI are properly trained; a Non-

Disclosure Agreement for each individual who is granted access to SSI; and an affirmation that each company/entity will designate a Senior Official who can certify that all appropriate protections will be followed, only authorized individuals will have access to the sensitive information, and that those individuals adequately understand their responsibilities to protect the information. TSA may also require these features for other contractual agreements (e.g., bailments), participants other transaction agreements, or those who receive other conditional SSI disclosures on a case-by-case basis.

In the case of a party seeking access to SSI in a civil proceeding in federal court, TSA will gather the information required for individual vetting, including fingerprinting to conduct a CHRC and also require these individuals to respond to questions to verify individuals' history in safeguarding sensitive information, including good standing with bar membership or sanctions; and to agree to abide by TSA instructions concerning the handling of SSI in connection with the court proceeding.

TSA is also revising the collection to allow individuals who have recently (*i.e.*, within 2 years or as determined appropriate by the program office) successfully undergone a federal background investigation (*i.e.*, Tier 1) or hold an active security clearance granting access to classified national security information to facilitate the STA. TSA will use this information as part of its determination as to whether provision of access to specific SSI would be detrimental to transportation security.

Number of Respondents: 263

Estimated Annual Burden Hours: An estimated 104.53 hours annually.³

Dated: February 5, 2021.

³ In the 60-day notice, the estimated annual burden was listed as 275 hours. TSA is now adjusting the estimate to 104.53 annual hours through the use of actual data.

Christina A. Walsh,

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Information Technology.

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